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No. 923

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENT

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IN THE

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OCTOBER TERM, 1965

No._____

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENT

JURISDICTIONAL STATEMENT

This is an appeal by Dorothy E. Bridges from the final judgement of the Supreme Court of the State of Mississippi rendered on October 4, 1965, affirming the decree of the Chancery Court of Harrison County, Mississippi, rendered on the 25th day of September, 1965, by which the Trial Court ratified, confirmed and approved Ordinance #1035 of City of Biloxi, Mississippi, annexing approximately 3,000 acres adjacent to, and immediately west of, the present City of Biloxi and in which annexed area there resides approximately 15,000 inhabitants, and which said annexation proceeding was had and done without the vote, consent or approval of the inhabitants annexed or by the qualified electors of the City of Biloxi in violation of the *Due Process and Equal Protection Clauses* of the *Fourteenth Amendment* to the *United States Constitution.* This Jurisdictional Statement is

submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

OPINIONS BELOW

The unreported opinion of the Chancery Court of Harrison County, Mississippi, rendered on the 3rd day of September, 1964, is attached to this Jurisdictional Statement as Appendix A, infra, at p. 17.

The decree of the Chancery Court of Harrison County, Mississippi, rendered on the 25th day of September, 1965, is attached to this Jurisdictional Statement as Appendix B, infra, at p. 21.

The opinion of the Supreme Court of the State of Mississippi is reported in 178 So. 2d 683 (October 4, 1965), and is attached to this Jurisdictional Statement as Appendix C, infra, at p. 31.

The order of the Mississippi Supreme Court dated October 25, 1965, overruling Suggestion of Error, per curiam and is attached to this Jurisdictional Statement as Appendix D, infra, at p. 41.

The opinion of the Supreme Court of the State of Mississippi overruling Appellant's Motion For. Stay and sustaining Appellee's Motion to Issue Mandate is reported in 180 So. 2d, 154 (November 15, 1965) and is attached to this Jurisdictional Statement as Appendix E, infra, at p. 43.

Thereafter and on, to wit, the 19th day of November, 1965, Appellant filed, "Motion To Fix Amount of Supersedeas Bond and TO Stay Judgment and Mandate Upon the Filing Thereof", with Certificate of Service and Brief which was overruled by the Mississippi Supreme Court. (see Appendix F, infra, at p. 49.)

JURISDICTION

By *Section* 3374-01 through *Section* 3374-33 *of the Mississippi Code of* 1942, *Annotated* (*Recompiled*), there is conferred on the Chancery Courts of Mississippi special and limited jurisdiction in the matter of creation, abolition, and expansion of municipalities.

The manner and method of the expansion of municipalities as set forth in said sections is here under attack as being violative of the *Due Process* and *Equal Protection Clauses* of the *United States Constitution;* the *Fifth Amendment* to the *United States Constitution,* and the *Civil Rights Act.*

The jurisdiction of the United States Supreme Court to review the decision of the Mississippi Supreme Court by appeal is conferred by 28 *U.S.C. Section* 1257 (2). A "statute of any state" therein mentioned encompasses state constitutional provisions. *Railway Express Agency v. Virginia,* 282 U. S. 440; *Adamson v. California,* 332 U. S. 46.

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Baker v. Carr,* 369 J. S. 186, 7 L. Ed. 2d 663; *Gomillion v. Lightfoot,* 5 L. Ed. 2d 110, 29 U. S. L. Week 4024, (Nov. 14, 1960); *U. S. v. Cruikshank,* 92 U. S. 542; *Nixon v. Herndon,* 273 U. S. 536; *Smiley v. Holm,* 285 U. S. 335; *Colegrove v. Green,* 328 U. S. 549; *Turman v. Duckworth,* 329 U. S. 675; *Cook v. Fortson,* 329 U. S. 675; *Terry v. Adams,* 345 U. S. 461; *Cooper v. Aaron,* 358 U. S. 1.

THE STATUTES INVOLVED

Section 3374-10, of the *Mississippi Code of* 1942, Annotated (Recompiled) is set forth in Appendix G, infra, at p. 56.

Section 3374-11, of the *Mississippi Code of* 1942, Annotated (Recompiled) is set forth in Appendix H, infra, at p. 57.

Section 3374-12, of the *Mississippi Code of* 1942, Annotated (Recompiled) is set forth in Appendix I, infra, at p. 58.

Section 3374-13, of the *Mississippi Code of* 1942, Annotated (Recompiled) is set forth in Appendix J, infra, at p. 59.

Amendment XIV, Section I of the *United States Constitution* is set forth in Appendix K, infra, at p. 60.

Amendment V of the *United States Constitution* is set forth in Appendix L, infra, at p. 61.

The Federal Civil Rights Act, 17 *Stat. L.* 13 *and* 16 *Stat. L.* 144, 42 *U.S.C. Section* 1983, is set forth in Appendix M, infra, at p. 62.

QUESTIONS PRESENTED

I. Does the failure of a state statute to permit the inhabitants and/or the qualified electors of an area sought to be annexed to vote upon the question of annexation offend the *Equal Protection Clause* of the *XIV Amendment?*

II. Can a municipality, by a majority vote of its three elected officials, annex an area approximately the size of the present boundaries of the municipality and containing approximately 15,000 inhabitants, without their consent or approval when none of said inhabitants voted on the election of said municipal officials?

III. Can a municipality annex a new territory and place upon the inhabitants and property owners thereof

additional taxes, a portion of which is used by said municipality for the retirement of bonded indebtedness on which said inhabitants had never been allowed to vote, and the funds from which said bonds were used by said municipality for improvements wholly outside the area annexed, without violating the *Due Process* and *Equal Protection Clauses* of the *XIV Amendment* as well as the *Federal Civil Rights Act?*

IV. Does an attack on a state statute authorizing annexation without a vote of the people involved present a justiciable controversy cognizable by the United States Courts?

STATEMENT OF THE CASE

Appellee, City of Biloxi, Mississippi, filed its petition on March 6, 1962, in the Chancery Court of Harrison County, Mississippi, for ratification, approval and confirmation of an ordinance extending and enlarging the boundaries of the City of Biloxi, Mississippi, as authorized by *Section* 3374-10 (see Appendix G, infra, at p. 56) and *Section* 3374-11 (see Appendix H, infra, at p. 57), of the *Mississippi Code of* 1942, annotated (Recompiled). Thereafter on April 11, 1962, a general demurrer to said petition was filed by certain objectors, which said demurrer was by the court sustained on May 2, 1962. Thereafter, and on, to wit, May 4, 1962, the chancellor entered his Fiat making the supplemental and amended petition for ratification, approval and confirmation of an ordinance extending the boundaries of the City of Biloxi, Mississippi, returnable at 12 Noon on Mondey, June 25, 1962.

Process was had as provided by *Section* 3374-04 of the *Mississippi Code of* 1942, Annotated (Recompiled), (see Appendix N, infra, at p. 63.

Within the time required by law objections to the ratification, approval and confirmation of said Biloxi Ordinance #1035 extending the boundaries of City of Biloxi, Mississippi was filed by 268 inhabitants of the area sought to be annexed by Appellee, City of Biloxi, one of whom was Appellant, Dorothy E. Bridges.

On June 16, 1964, the objectors filed a general demurrer (see Appendix O, infra, at p. 64) by which the constitutional rights of the objectors was raised, including the *Equal Protection* and *Due Process Clauses* of the *XIV Amendment* to the *United States Constitution;* the *V Amendment* to the *United States Constitution* and the *Federal Civil Rights Act.* This demurrer was argued and overruled by the Trial Court on the 29th day of June, 1962, as reflected by its order thereon. (see Appendix P, infra, at p. 66.)

At this point it is deemed both proper and important to point out that the Federal Constitutional Rights of the Appellant was raised in the Trial Court prior to the trial of the case on its merits. This point is made to refute the erroneous and untrue statement made by Appellee, City of Biloxi, in its written, "Opposition To Motion To Fix Amount of Supersedeas Bond and To Stay Judgment and Mandate Upon Filing Thereof", filed in this Court on the 16th day of December, 1965, and presented to Mr. Justice Brennan, where it was stated in Paragraph 5 on page 2 of said instrument:

> "(5) That subsequently the decree of the Chancery Court of Harrison County, Mississippi was appealed by the Movant to the Supreme Court of the State of Mississippi and for the first time there raised the question of the violation of her constitutional rights under the due process clause and under the equal protection

clause of the Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act of 1962 * * *"

This false statement was purposely designed to mislead, influence and prejudice this Court in the matter of fixing a supersedeas bond and we, therefore, respectfully request that Appellant's application for supersedeas bond be re-considered. Appendix O clearly shows that the constitutional questions were raised prior to the case reaching the Mississippi Supreme Court, and Appendix P shows that the questions were argued before the Trial Court and overruled.

Thereafter commencing on June 29, 1964, testimony and documentary evidence was offered in the trial of the case on its merits, at the conclusion of which the Trial Court entered its decree granting the relief prayed for by the Appellee, City of Biloxi, Mississippi, (see Appendix B, infra, at p. 21)

Within the time required by law appeal was perfected to the Mississippi Supreme Court where, in due course, oral argument was made to said court and briefs filed by Appellant and Appellee.

On October 4, 1965, the Mississippi Supreme Court rendered its decision (see Appendix C, infra, at p. 31) affirming the decree of the Chancery Court of Harrison County, Mississippi.

Thereafter, and within the time required by law, Suggestion of Error was filed by Appellant, which said Suggestion of Error was by the Mississippi Supreme Court, overruled on October 25, 1965. (see Appendix D, infra, at p. 41)

Thereafter, and on, to wit, November 1, 1965, Notice of Appeal to the Supreme Court of the United States

was filed by Appellant with Proof of Service thereon pursuant to 28 *U. S. C. A. Section* 1257 (2). (see Appendix Q, infra, at p. 67). On said date, November 1, 1965, Appellant filed in the Mississippi Supreme Court, Motion For Stay of Mandate and Approval of Bond on Appeal to the Supreme Court of the United States with Certificate of Service (see Appendix R, infra, at p. 72). On said date, November 1, 1965, Appellant also filed bond on appeal to the Supreme Court of the United States and Brief thereon with Certificate of Service (see Appendix S, infra, at p. 75). The Mississippi Supreme Court by its decision on November 15, 1965, (see Appendix E, infra, at p. 43) overruled Appellant's tendered supersedeas bond and sustained Appellee's Motion directing the clerk to return the mandate to the Chancery Court of Harrison County, Mississippi.

Thereafter and on, to wit, the 8th day of December, 1965, Appellant filed Motion in the United States Supreme Court to Fix Amount of Supersedeas Bond and To Stay Judgment and Mandate Upon the Filing Thereof, which said motion was denied by Mr. Justice Brennan on the 17th day of December, 1965.

Thereafter and on, to wit, the 20th day of December, 1965, being a day within the period allowed for perfecting appeal to the United States Supreme Court, Appellant filed Motion For Extension of Time Within Which to File Record on Appeal (see Appendix T, infra, at p. 82) which said motion was sustained by the Mississippi Supreme Court allowing an enlargement of 30 days time within which to file and perfect said appeal to the United States Supreme Court. (see Appendix U, infra, at p. 84). This Jurisdictional Statement is filed within the extended period.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents constitutional questions of serious import, clearly requiring plenary consideration with briefs on the merits and oral argument for their resolution.

This Court's action on November 1, 1960, noting probable jurisdiction in *Baker v. Carr, supra,* October Term, 1960, No. 103, and subsequent opinion rendered therein on March 26, 1962, should alone serve as a clarion call that the questions herein presented are substantial.

Every argument for this Court's accepting jurisdiction in *Baker v. Carr, supra,* is increasingly present here. Notwithstanding the fact that there is only one Appellant, namely, Dorothy E. Bridges, this is a class case involving the constitutional rights of many thousands of people, all of whom were denied the right to vote on the question of annexation which carried with it increased taxation, whereas in *Baker v. Carr, supra,* the question involved a diminution or debasement of the vote under the announced doctrine of "one man, one vote".

The state statutes here under attack violate the familiar precept that any classification enactment, *regardless of subject matter,* is infirm under the *XIV Amendment* when not "rooted in reason", *Griffin v. Illinois,* 351 U. S. 12, 21 (1953) or based on "rhyme or reason", *Goesaert v. Cleary,* 335 U. S. 464 (1949). We have here reached, in fact, the situation posed hypothetically by Mr. Justice Douglas in *Mac Dougall v. Green,* 335 U. S. 281.

> " 'None would deny that a State Law giving some citizens twice the vote of other citizens in either the primary or the general election would lack that equality which the Fourteenth Amendment guarantees.' "

Failure of the statutes here under attack to permit the inhabitants of an area annexed by a municipality to vote on the question of annexation indicates a serious constitutional deprivation of the franchise and to the right of fair classification generally, which this Court, in other contexts has never hesitated to correct. Not only do general substantive precedents support Appellant, but this Court's holdings in *Baker v. Carr, supra,* are clearly decisive. In that case, this Court held:

> "Appellant's claim that they are being denied equal protection is justiciable, and if discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination related to political rights."

The Court also held in that case:

> "A state court's inability to grant relief does not bar a federal court's assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights."

Mr. Justice Brennan concluded the majority opinion in *Baker* thusly:

> "We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment."

The anomaly which makes the alleged discrimination in this case so glaring is the fact that it exists in the very heart of the precencts of the citadel of States' rights.

True, the ordinance in question, the Decree of the Chancellor, and the decision of the Mississippi Supreme

ourt point out specifically that there has been a deter-
ination of "reasonableness" under the criteria out-
ned in

Dodd v. City of Jackson
238 Miss. 372; 118 So. 2d 319,

evertheless, that the ordinance may appear "reason-
ble" on its face and under the evidence, yet if that same
vidence also demonstrates that in application and in
ffect it will operate to deprive the citizens of the pro-
osed annexed area of their constitutionally protected
ights, and if it does so deprive, then the ordinance must
ail, and is void.

Yick Wo v. Hopkins
118 U. S. 356 (1886)

Dean Milk Co. v. City of Madison
340 U. S. 349, 354 (1951)

Boynton v. Virginia
364 U. S. 454 (1960)

Appellant will have her property taxed for the payment
f bonds that were issued as long as twenty years before
he proposed annexation.

The Appellant did not have any opportunity of notice,
o privilege of protest, cast no vote for the officials who
ssued the bonds or on the bonds themselves, had no
pportunity of hearing either for or against the creation
f the debt, or on the validation proceedings, and received
one of the benefits from the expenditure of the bond
roceeds.

"Taxation without Representation is Tyranny."

Compare: *Mount Pleasant vs. Beckwith*
100 U. S. 514; 25 L. Ed. 699

Morgan v. Beloit (U. S.)
19 L. Ed. 203

Brown v. Memphis
97 U. S. 284; 24 L. Ed. 937

Laramie County v. Albany County
92 U. S. 307; 23 L. Ed. 552

Gulfport v. Todd
92 M. 428; 46 So. 541

The City of Biloxi, Mississippi, may not discriminate against those to be taken, and in favor of those already in the City so as to lessen the burden of taxation of the "old citizen" and place a part of the burden of taxation for former improvements on the "new citizen".

Hermandez v. Texas
347 U. S. 475; 98 L. Ed. 966

Home Tel. & Tel. Co. v. Los Angeles
227 U. S. 278; 57 L. Ed. 510

George v. Portland
114 Or. 418; 235 P. 681; 39 A. L. R. 341
16 Am. Jur. 2d. Page 846, et seq.

DUE PROCESS

Compare:

16 *Am. Jur. 2d,* Page 930 at Page 936

Dartmouth College v. Woodward
4 Wheat. (U. S.) 518; 4 L. Ed. 629

16 *Am. Jur. 2d,* 946, *Consti. Law,* Sec. 550, et seq, and cases cited in notes.

Here the ordinance, the decree approving annexation and the plan "to be put into effect" are within the con-

demnation of and violate the fundamental substantive principles of "equal protection" and "due process" guaranteed to Appellant by the *Fourteenth Amendment.*

Moreover, the annexation statutes of neighboring states, namely, Louisiana, Arkansas, Tennessee, Alabama, Georgia, and Florida all provide for a vote of the qualified electors in the area sought to be annexed and/or the qualified electors of the municipality annexing the area. These provisions in the statutes of the neighboring states are indicitative of legislative cognizance of the Equal Protection Clause of the *Fourteenth Amendment.*

See:

Baker vs. Carr, 369 U. S. 186; 7 L. ed. 2d 663, at Page 693; 82 S. Ct. 691:

> "Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution ... The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of realignment of political subdivisions. 'It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.' " 364 U. S. 344, 345.

CONCLUSION

The questions here presented are at least of equal urgency, merit and national importance to those which recently impelled this Court to grant full hearing in *Baker v. Carr* and to thereafter afford relief in that case. The thousands of people being annexed by Appellee, City of Biloxi, Mississippi, cry out to this Court to be heard against the invidious discrimination that makes a mockery of their right of franchise, against the subtle, as well as overt denial of their vote as otherwise guaranteed by this Court under the *Fourteenth Amendment* and other amendments, and against an arbitrary and capricious classification which for that reason alone must surely offend familiar Fourteenth Amendment obligations.

Appellant therefore prays that this appeal be granted and that full hearing be had.

Respectfully submitted,

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BY: Upton Sisson
UPTON SISSON

DATED: January 20, 1966

CERTIFICATE OF SERVICE

I, Upton Sisson, of counsel for the appellant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 20th day of January, 1965, I served copies of this attached Jurisdictional Statement on City of Biloxi, Mississippi, appellee herein, by mailing a copy of said brief, in a duly addressed envelope, deposited in the United States Post Office at Gulfport, Mississippi, postage prepaid, to their counsel of record, namely:

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APPENDIX "A"

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

CAUSE NO. 45,112

IN THE MATTER OF THE EXTENSION OF THE BOUNDARIES OF THE CITY OF BILOXI, MISSISSIPPI

OPINION OF THE COURT

This matter was set during the May term, 1964, of this court by agreement of counsel for all parties for a vacation hearing on June 29, 1964, and on said date the parties hereto appeared by their respective attorneys and announced ready for trial. The court heard argument of counsel on plea in bar to the amended petition filed by petitioners by the objectors and entered an order overruling said plea.

The court also heard argument of counsel on general demurrer to the amended petition filed by objectors and entered an order overruling said demurrer.

The court also entered an order allowing withdrawal of motion to strike filed by the petitioners, said ruling being made at the request of attorneys for petitioners with no objection thereto by objectors.

The court then went into and heard testimony of petitioners and objectors which extended until the 17th day of July, 1964.

The court has received briefs filed by attorneys for petitioners, reply thereto by attorneys for objectors, and reply to objectors brief by attorneys for petitioners.

After having studied the pleadings, the testimony presented together with exhibits thereto, and briefs by the respective parties the court finds as follows:

That the ordinance attached as an exhibit to the amended petition followed the statutes governing such matters and the city council of Biloxi, Mississippi, therein determined that the public convenience and necessity required the extension of the limits of the City of Biloxi, and correctly set out the land to be embraced in said extension and properly delineated the corporate limits and boundaries as enlarged, modified, extended, and fixed by the petition for extension of said limits.

The ordinance set out the improvements the city proposed to make within the territory to be annexed and set out the time in which said improvements would be completed.

The ordinance set out services to be rendered the proposed annexed territory immediately upon the effective date of the ordinance.

The ordinance set out the services to be furnished the proposed annexed territory within a six month period from the effective date of the ordinance.

The court finds that the proof presented in said matter by the petitioners met the burden placed on them by the statute and that the public convenience and necessity required the extension; that said extension was feasible and reasonable; and that said services and improvements provided for in said ordinance was economically feasible and could be performed by the city within the time set out therefor in the ordinance.

The testimony showed that the extension of the limits was vitally necessary for the inhabitants within the

present city limits and showed that balanced against the additional taxes the inhabitants of the proposed annexed territory would pay it would be a reduction in insurance rates, reduction as to some in water rates, better water service to others in the proposed annexed territory, better police protection, better garbage collection, better fire protection, and of far reaching importance improvement of the health hazards by installation of a sewerage system which would affect the inhabitants of the city, the inhabitants of the proposed annexed territory, and the inhabitants of other residents in that portion of the county.

The main testimony presented by objectors was that they did not want or need the services provided by the ordinance, and that the cost of annexation would cost them additional taxes which would consist of municipal levies. (The inhabitants of the proposed annexed area are already paying taxes in the Biloxi Municipal Separate School District.)

There was no large uninhabited areas situated between the areas proposed to be annexed.

The testimony showed that the only feasible direction in which the city could expand was to the westward wherein lies the area proposed to be annexed.

Our supreme court has consistently held that objections such as propounded in this case would not sustain a denial of the petition to extend corporate limits of a city.

The decree of this court is that the supplemental and amended petition of the City of Biloxi, for the extension of its limits be granted.

This the 3rd day of September, 1964.

Robert R. Buntin
CHANCELLOR

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APPENDIX "B"

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

NO. 45,112

IN THE MATTER OF THE EXTENSION OF THE BOUNDARIES OF THE CITY OF BILOXI, MISSISSIPPI

DECREE RATIFYING, APPROVING AND CONFIRMING AND ORDINANCE EXTENDING, ENLARGING AND DEFINING THE BOUNDARIES OF THE CITY OF BILOXI, MISSISSIPPI

This cause came on for hearing and was heard by the Chancery Court of Harrison County, Mississippi, Division No. 2, in the Harrison County Courthouse at Gulfport, Mississippi, upon the Supplemental and Amended Petition for ratification, approval and confirmation of an ordinance extending, enlarging and defining the boundaries of the City of Biloxi, Mississippi, said ordinance being Ordinance No. 1035, entitled "An Ordinance Amending Ordinance No. 1034 of the City of Biloxi dated March 5, 1962 Enlarging, Extending and Defining the Corporate Limits and Boundaries of the City of Biloxi, Harrison County, Mississippi", a copy of said Ordinance No. 1035 being attached as Exhibit "A" to said Supplemental and Amended Petition of the City of Biloxi, a Mississippi municipal corporation domiciled in Harrison County, Mississippi; said amended petition and the objections filed by the various objective parties or groups which are of record and on file in this cause, and the Court having set said cause for hearing in Vacation pursuant to agreement of counsel representing all parties, and the Court having pursuant to said setting by agree-

ment of counsel commenced hearing of this cause on June 29, 1964 and continuing said hearing from day to day and from time to time until all parties had rested their respective cases on the 17th day of July, 1964, and the Court having taken said cause under advisement for a decree either in Vacation or at a subsequent Term of this Court pursuant to agreement of counsel and having considered said Amended Petition, the Objections, and all proof offered by all of the interested parties, the Court is of the opinion and makes the following findings and conclusions, to-wit:

1. That said Amended Petition before the Court was filed in accordance with the provisions of an ordinance duly and legally adopted by the City Council of the City of Biloxi, Mississippi, at a regular meeting of said City Council held on May 3, 1962; that said ordinance attached as Exhibit "A" to the said Amended Petition followed the statutes governing such matters and that the City Council of Biloxi, Mississippi, therein determined that the public convenience and necessity required the extension of the limits of the City of Biloxi, and correctly set out the lands to be embraced in said extension and properly delineated the corporate limits and boundaries as enlarged, modified, extended and fixed the same as required by the statutes of the State of Mississippi.

2. That the said ordinance sets out the improvements the City proposed to make within the territory to be annexed and set out the time in which said improvements would be completed with reasonable certainty.

3. That said ordinance sets out the services proposed by the City of Biloxi to be rendered within the territory sought to be annexed immediately upon the effective date of the said ordinance.

4. That said ordinance sets out the services to be furnished within the proposed territory to be annexed within a six months period from the effective date of said ordinance.

5. The Court further finds that the proof presented in this matter by the petitioners met the burdens laid upon them by the statutes and the laws of the State of Mississippi and that the public convenience and necessity required the extension; that said extension was feasible and reasonable; and that said services and improvements provided for in said ordinance were economically feasible and could be performed by the City within the time set out therefor in the ordinance.

6. The Court further finds that the evidence shows that the extension of the limits of the City of Biloxi is vitally necessary for the inhabitants within the present city limits and further shows that balanced against the additional taxes the inhabitants of the proposed annexed area would pay, there will be a reduction in insurance rates, a reduction as to water rates for those presently receiving water from the city water supply, a better water service to others in the proposed annexed territory, better police protection, better garbage collection, better fire protection, and of far reaching importance improvement of the health hazards by installation of a sewage system which would affect the inhabitants of the present city, the inhabitants of the proposed annexed territory, and the inhabitants or other residents in that portion of the county.

7. The Court further finds that the testimony and evidence presented by the obectors to the effect that they did not want or need the services provided by the aforesaid ordinance, and that the cost of annexation would

cost them additional taxes which would consist of municipal levies is insufficient to warrant a denial of the petition of the petitioner, City of Biloxi.

8. The Court further finds from the evidence that there are no large uninhabited areas situated between the existing city limits of the City of Biloxi and the areas proposed to be annexed pursuant to the terms of said ordinance.

9. The Court further finds that the evidence shows that the only feasible direction in which the City of Biloxi can expand is to the westward wherein lies the area proposed to be annexed under the provisions of said ordinance.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court as follows, to-wit:

1. That the petitioner, City of Biloxi, has done everything required of it under the law in such cases made and provided, and the technical objections and each of them raised by the objectors to the legal sufficiency of the ordinance and the exhibit thereto of the City of Biloxi entitled "An Ordinance Amending Ordinance No. 1034 of the City of Biloxi Dated March 5, 1962 Enlarging, Extending and Defining the Corporate Limits and Boundaries of the City of Biloxi, Harrison County, Mississippi" being Ordinance No. 1035 adopted by the City Council of Biloxi, Mississippi at a regular meeting on May 3, 1962 are without merit and the same should be and they and each of them are hereby overruled and said ordinance is declared to be legal and valid in every respect.

2. That the enlargement and modification of the boundaries of the City of Biloxi, Mississippi as set forth in the Amended Petition and Ordinance attached thereto

as Exhibit "A" do not constitute the taking of the property of any of the objectors in violation of any of their rights under the Constitution of the State of Mississippi or of the Constitution of the United States.

3. That the proposed enlargement and modification of the boundaries of the City of Biloxi, Mississippi, as set forth in the Amended Petition and ordinance thereto attached as Exhibit "A" is found to be reasonable and required by the public convenience and necessity.

4. That the improvements and the public and municipal services which said City of Biloxi proposes to render in the territory proposed to be annexed, and the time within which said improvements and services will be so rendered, are hereby declared to be reasonable; and that the City of Biloxi can and will render the proposed improvements and the public and municipal services in the annexed territory within a reasonable time.

5. That the proposed enlargement of the boundaries of the City of Biloxi as described in the Amended Petition and ordinance attached thereto as Exhibit "A" filed herein and under consideration by the Court, by the annexation of the following described lands is hereby declared to be reasonable and the same is hereby approved, ratified and confirmed, said land being more particularly described as follows, to-wit:

Commencing at a concrete monument common to Sections 23, 24, 25 and 26, Township 7 South, Range 10 West; thence North 89° 41′ East 2,928.5 feet measured along the line common to Sections 24 and 25, Township 7 South, Range 10 West to a 1-1/4″ pipe; thence South 0° 21′ West 444 feet; thence South 89° 41′ West 275 feet; thence South 0° 09′ West 2,199.9 feet; thence North 89° 45′ East 1,188.2 feet to a 1-1/4″ pipe on the

West margin of Rodenberg Avenue; thence North 0° 36′ West 2,603 feet; thence North 89° 20′ East 77 feet to a concrete monument; thence South 46° 20′ East 764.7 feet; thence South 0° 20′ 30″ East 6,575.9 feet to a concrete monument on the North margin of West Beach Drive or U. S. Highway 90; thence continuing South 0° 20′ 30″ East 3,000 feet to a point in the Mississippi Sound; thence in a Westerly direction along a line in the said Mississippi Sound 3,000 feet South of and parallel to the North margin of the right-of-way of U. S. Highway 90 to the intersection of said line in the Mississippi Sound with a line common to Sections 32 and 33, Township 7 South, Range 10 West as extended South 3,000 feet from the North margin of the right-of-way of the said West Beach Drive or U. S. Highway 90; thence North 3,000 feet to the North margin of said West Beach Drive or U. S. Highway 90; thence continuing North along the line common to said Sections 32 and 33 and continuing North along a line common to Sections 28 and 29, all in Township 7 South, Range 10 West, and along such line as extended North to a point on the South bank of the Back Bay of Biloxi; thence continuing North to the center line of the marked channel of the Back Bay of Biloxi; thence Easterly along the center line of the said marked channel of Back Bay of Biloxi to its intersection with the line common to Sections 23 and 24, Township 7 South, Range 10 West, extended North; thence South to the South shore of the Back Bay of Biloxi; thence continuing South along a line common to Sections 23 and 24, Township 7 South, Range 10 West to the point of beginning; Less and except a tract of land comprising eighty-seven and one-half (87-1/2) acres, more or less, in Fractional Section 34, Township 7 South, Range 10

West, in Harrison County, Mississippi known as "Beauvoir"

6. That the corporate limits and boundaries of the City of Biloxi, Harrison County, Mississippi, as ratified, approved, and confirmed by this Court shall be as follows, to-wit:

All of that tract of country consisting of land and water in Harrison County, Mississippi beginning at a point where the East boundary line of Harrison County, Mississippi intersects the old Biloxi-Ocean Springs bridge said point of beginning being the center of the marked channel of the Bay of Biloxi and further described as being at coordinate point North 268,882.8, East 495,630 transverse Mercator projection Mississippi East; thence North and Westerly along the center line of said marked channel of the Bay of Biloxi and the Back Bay of Biloxi to a point where it intersects the Biloxi-D'Iberville bridge; thence continuing Westerly along the center line of said marked channel to a point where the center line of said marked channel intersects a line common to Sections 23 and 24, Township 7 South, Range 10 West, as extended into the Back Bay of Biloxi; thence continuing in a Westerly direction along said marked channel of the Back Bay of Biloxi to a point where said marked channel intersects a line common to Sections 28 and 29, Township 7 South, Range 10 West if extended North, thence South to the Northwest corner of said Section 28, Township 7 South, Range 10 West; thence continuing South along the line common to Sections 28 and 29, Township 7 South, Range 10 West and continuing South along the line common to Sections 32 and 33, Township 7 South, Range 10 West to the North margin of the right-of-way

of U. S. Highway 90 or West Beach Drive, thence continuing South along a line common to Sections 32 and 33, Township 7 South, Range 10 West if extended South to a point in the Mississippi Sound which is 3,000 feet South of the North Margin of the right-of-way of U. S. Highway 90 or West Beach Drive; thence in an Easterly direction, meandering along a line 3,000 feet South of and parallel to the said North margin of the right-of-way of U. S. Highway 90 or West Beach Drive to a point where said line intersects a line which is the West boundary of the City of Biloxi as of May 3, 1962 as extended South 0° 20′ 30″ East from a concrete monument on the North margin of U. S. Highway 90 or West Beach Drive which said concrete monument marks a point on the West Boundary of the City of Biloxi as constituted on May 3, 1962; thence North 0° 20′ 30″ West 2,000 feet to a point in the Mississippi Sound; thence in an Easterly direction meandering along the line 1,000 feet South of and parallel to the said North margin of West Beach Drive or U. S. Highway 90 to the center line of the marked Biloxi channel; thence Easterly and Northerly following the center line of said marked Biloxi channel to the point of beginning; Less and except a tract of land comprising eighty-seven and one-half (87-1/2) acres, more or less, in Fractional Section 34, Township 7 South, Range 10 West in Harrison County, Mississippi known as "Beauvoir".

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that the Clerk of this Court shall forward to the Secretary of State of Mississippi a certified copy of this decree, which shall be filed in the Office of the Secretary and shall remain a permanent record thereof as required by law.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that the petitioner, the City of Biloxi, Mississippi, shall furnish to the Clerk of this Court a map or plat of the boundaries of the City of Biloxi, Mississippi, as herein approved, ratified and confirmed, which said map or plat shall be recorded in the official plat book of Harrison County, at Gulfport, Mississippi, as required by law.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that all costs of this proceeding, with the exception of witness fees for witnesses offered by the various objectors, be assessed against the petitioner, the City of Biloxi, and that the witness fees of the witnesses offered by the various objectors be assessed against the objectors offering such witnesses for all of which execution may issue.

ORDERED, ADJUDGED AND DECREED, this the 25th day of September, 1964.

Robert R. Buntin
CHANCELLOR

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APPENDIX "C"

Dorothy E. BRIDGES

v.

CITY OF BILOXI, Mississippi.

No. 43671.

Supreme Court of Mississippi.

Oct. 4, 1965.

The city passed an ordinance annexing certain territory. From a decree of the Chancery Court, Harrison County, Robert R. Buntin, C., objectors in the annexed territory appealed. The Supreme Court, Gillespie, J., held that evidence justified chancellor's finding that city would be financially able to provide services it proposed to furnish residents of annexed area and that proposed annexation was feasible and reasonable.

Affirmed.

1. *Municipal Corporations* — 33(6)

City seeking decree ratifying the annexation of territory to city assumed burden of showing that proposed enlargement of city limits was reasonable, in accordance with statute. Code 1942, § 3374-13.

2. *Municipal Corporations* — 33(6)

Evidence justified chancellor's finding that city would be financially able to provide services it proposed to furnish residents of annexed area and that proposed annexation was feasible and reasonable. Code 1942, §§ 3374-10, 3374-11, 3374-13.

3. *Constitutional Law* — 225(2), 278(2)

Residents of area annexed to city would not be denied due process and equal protection of law on ground that their property would be subject to taxation to pay general obligation bonds issued by city before the annexation ordinance was passed. Code 1942, §§ 3374-10, 3374-11; Const. § 14; U.S.C.A. Const. Amend. 14.

4. *Municipal Corporations* — 33(2)

The criteria for determining whether annexation ordinance is reasonable are: (1) the city's need for expansion; (2) whether area sought to be annexed is reasonably within path of such expansion; (3) the potential health hazard from sewage and waste disposal in annexed area; and (4) the city's financial ability to make the improvements and furnish municipal services as promised. Code 1942, §§ 3374-10, 3374-11, 3374-13.

5. *Municipal Corporations* — 33(2)

Proposed annexation of territory to city was not, under record, unreasonable or not feasible from a financial standpoint. Code 1942, §§ 3374-10, 3374-11, 3374-13.

6. *Municipal Corporations* — 33(2)

Annexation ordinance was not invalid on ground that it did not define with certainty the territory which it was proposed to include in city corporate limits. Code 1942, §§ 3374-10, 7447-7461, 7456.

7. *Deeds* — 38(1)

Where parcels of realty are conveyed by well-known designations, such conveyances are valid, although resort to extrinsic evidence may be necessary to show what was accurately included in general description employed in the conveyances.

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Upton Sisson, Blass & Smith, Gulfport, Forrest B. Jackson, Jackson, for appellant.

Watkins, Pyle, Edwards & Ludlam, Jackson, Charles K. Pringle, Albert Sidney Johnston, Jr., Biloxi, for appellee.

GILLESPIE, Justice.

The City of Biloxi passed an ordinance defining an area adjacent to the corporate limits which it desired to annex, and describing in general terms the proposed improvements to be made in the annexed territory, the extent of such improvements, and the approximate time within which such improvements would be made. Miss. Code Ann. § 3374-10 (1956). Thereafter the City of Biloxi filed its petition in the Chancery Court of Harrison County, in which such municipality and the annexed territory is located, and prayed for a decree ratifying, approving and confirming the enlargement of the city limits in accordance with said ordinance. Miss. Code Ann. § 3374-11 (1956). After due notice numerous objections were filed, and after a full hearing, the chancellor entered a decree finding that the enlargement of the city limits was reasonable and that reasonable public and municipal services would be rendered in the annexed territory within a reasonable time. The decree approved, ratified and confirmed the proposed enlargement of the corporate limits. Miss. Code Ann. § 3374-13 (1956).

[1] The City of Biloxi assumed the burden of showing that the proposed enlargement of the city limits was reasonable, in accordance with the statute. Miss. Code Ann. § 3374-13 (1956). Many witnesses were offered by the City of Biloxi and by the objectors. On behalf of the City experts in the field of city planning were introduced and testified in support of the reasonableness of the ordi-

nance, the needs of the area proposed to be annexed for sewage, street improvements and maintenance, police protection, garbage disposal, and other services, and the feasibility and reasonableness of the proposed extension. The evidence on behalf of objectors living in the area proposed to be annexed consisted largely of their testimony that they now have adequate services and are content to remain outside of the City of Biloxi.

The City of Biloxi has a long and interesting history. The first permanent white settlement in the Mississippi Valley, it was first settled in 1699 by Pierre le Moyne, Sieur d'Iberville. Since about 1840 the City of Biloxi has been a summer resort and for many years has been a year-around vacation and convention city. It is located on the east end of a peninsula lying between Back Bay of Biloxi and the Mississippi Sound.

The existing corporate limits include an area of 6,405 acres of land and water. Of this amount, forty percent is water, leaving abqut 3,800 acres of land. Of this amount, 3,410 acres are in the developed area, with a population of 45,000 people. The average population density of the developed area is thirteen persons per acre. There are 325 acres of vacant land within the present city limits, over one-third of which is marsh land or mud flats, leaving 244 acres of vacant land available for future expansion. Included in the present city limits is Keesler Air Force Base, a large military establishment.

The City has grown rapidly, especially during the past ten years, and further population increase is anticipated. The area proposed to be annexed lies immediately to the west of the present city limits and comprises about 4,525 acres of land, approximately 2,000 acres of which is developed with a population of 10,000. The average density

of the developed area is about five persons per acre. Approximately 2,525 acres of this area is vacant land, almost all of which is suitable for development as residential subdivisions. The City of Biloxi has an adequate water system from which it services approximately one-half of the inhabitants of the area proposed to be annexed. The customers of the water system presently living outside the city limits are charged fifty percent more than the customers within the City.

The City of Biloxi cannot expand in any direction except to the west and the area proposed to be annexed is the only area into which the City can expand, being bounded by water in all other directions.

The ordinance described in general terms the proposed improvements to be made in the annexed territory. It proposed that existing streets would be improved, the City would install water lines, sewer disposal service, and street lighting where necessary and feasible; said improvements to be completed within a reasonable time not to exceed five years from the date of the ordinance. The ordinance further stated that the City would furnish immediately the annexed territory with police protection, fire protection, maintenance of existing streets, reduction in water rates to users presently served by the City of Biloxi, the right to exercise the ballot, and the right to use all other municipal facilities furnished citizens of the municipality. The ordinance also provided that garbage removal and pest control service would be furnished within six months from the effective date of the ordinance. The City offered studies by experts to show the financial structure of the City of Biloxi, the cost of municipal services, the expected amount of revenue to be received from taxes in the annexed area, the estimated cost of some

of the municipal services in the annexed area, and the approximate cost of capital improvements.

[2] We are of the opinion that the evidence fully justified the chancellor's finding that the City will be financially able to provide the services it proposes to furnish the residents of the annexed area and that the proposed annexation is feasible and reasonable.

[3] Objectors contend that they will be denied due process and equal protection of the law under the Mississippi and United States Constitutions because their property will be subject to taxation to pay general obligation bonds issued by the City of Biloxi before the annexation ordinance was passed. This contention is not supported by reason or authority. If this were the law it would be practically impossible to annex territory to a municipality. Most municipalities have existing general obligation bonded indebtednesses which are serviced and retired from tax proceeds. The cases cited by objectors in support of this argument are not persuasive. Barnes v. Kansas City, 359 Mo. 519, 222 S.W. 2d 756 (1949), 10 A.L.R. 2d 553 (1950), holds that property brought into a municipality by annexation is subject to taxation to discharge municipal indebtedness previously incurred and existing at the time of annexation. There is no statute in this state exempting residents of annexed areas from paying taxes for general municipal purposes. They are required to share in the burdens and obligations as well as the benefits common to all citizens of the city.

Objectors next contend that the proposed expansion of the municipality limits is unreasonable, and is not feasible from a financial standpoint. The argument under this subdivision of objectors' brief covers a wide range and is for the most part general in nature. It is contended

that the inhabitants of the annexed area have the services proposed to be furnished by the City and that the County under existing laws can provide all of the zoning, police protection and other services which the City could furnish. It is contended that the City of Biloxi will make a profit from the taxes levied on the property within the annexed area which will be spent within the old area of the City. Objectors refer to the annexation ordinance as being unfair and a "land-grab" for the purpose of taxing the people residing in the annexed area to improve the area within the borders of the present City of Biloxi.

The findings of the chancellor are contrary to these contentions and we are of the opinion that such findings are not manifestly wrong.

[4] In Dodd et al. v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960), this Court reviewed our cases and analyzed the statutes governing the annexation of additional territory to municipalities, and laid down the general criteria for determining whether an annexation ordinance is reasonable. The following were found to be important factors governing the determination of this question: (1) The City's need for expansion; (2) whether the area sought to be annexed is reasonably within the path of such expansion; (3) the potential health hazard from sewage and waste disposal in the annexed area; and (4) the City's financial ability to make the improvements and furnish municipal services as promised.

[5] As already pointed out the City of Biloxi can expand in only one direction, the area included in the annexation ordinance lying to the west of the present city limits. There is practically no area within the present city limits for development of new business enterprises or residential areas, the only suitable land being

approximately 244 acres. The City is experiencing a rapid growth in population. The annexed area is growing rapidly both in commercial enterprises and in residential subdivisions. The chancellor was manifestly correct in finding that the city needs the area for expansion and that the city can expand only into the annexed area.

There is no doubt that within the near future the entire annexed area will be developed into commercial and residential areas. It will in fact be adjacent to and for all practical purposes a part of the City of Biloxi. As stated in Dodd v. City of Jackson, supra,

> There is much merit in the theory of overall planning, namely, where it can be reasonably anticipated that a certain area will become a part of a city in a reasonable time, it is better to take it in and develop the same properly and wisely, with particular reference to a uniform system for securing water, the development of streets, and the collection and disposal of sewage and waste, rather than to let the area develop in a harum-scarum manner as each builder or developer may determine. Instances of the lack of uniform planning in laying out streets, water lines, and sewage disposal in the towns and cities can be seen on every hand. (238 Miss. at 396, 118 So. 2d at 330).

This quotation is clearly applicable to the present case.

The evidence showed that about fifty percent of the people in the annexed area receive water from the system operated by the City of Biloxi. As already stated, these residents pay a surcharge of fifty percent for the privilege of using city water. After annexation, they will be charged the same as other residents of the City of Biloxi. The sewage system in the annexed area consists of septic tanks, and the proof established that the use of septic

tanks constitutes a health hazard both to the residents of the annexed area and to the residents of the present City of Biloxi. The City of Biloxi proposes to correct this situation by installing an appropriate sewage system.

The City proposed that it would construct the necessary streets and improve existing streets within a reasonable time.

Other facilities proposed to be furnished to the annexed area include fire protection, which will result in a substantial reduction in insurance rates, police protection, street improvements and drainage, garbage collection, library service, establishment of recreational areas and the installation of street lights where needed and feasible. The proof showed that the City of Biloxi is in sound financial condition, and with the taxes to be levied on the property within the annexed area will be financially able to provide the services proposed to be furnished the annexed area within a reasonable time.

[6, 7] Objectors next argue that the expansion ordinance does not define with certainty the territory which it is proposed to include in the corporate limits. This argument is based on Mississippi Code Annotated section 3374-10 (1956), which requires the ordinance to define "with certainty the territory which it is proposed to include in or exclude from the corporate limits" and "defining the entire boundary as changed." It is contended that while the overall perimeter description is correct, the description is insufficient for the reason that it contains the following: "Less and except a tract of land comprising eighty-seven and one-half (87-1/2) acres, more or less, in Fractional Section 34, Township 7 South, Range 10 West, Harrison County, Mississippi, known as 'Beauvoir'." Objectors contend that the exception is so

indefinite as to invalidate the entire description. The City's engineer stated that the map attached to the ordinance does not necessarily contain an accurate description of Beauvoir. But the map does show Beauvoir by name and shows that it is bisected by the Louisville and Nashville Railroad. We are of the opinion that there is no merit in the contention of objectors. This Court has long adhered to the rule that where parcels of real estate are conveyed by well-known designations, such conveyances are valid, although resort to extrinsic evidence may be necessary to show what was accurately included in the general description employed in the conveyance. Jones v. Hickson, 204 Miss. 373, 37 So. 2d 625 (1948). Moreover, Mississippi Code Annotated section 7456 (1952) contains a description of Beauvoir, which is a shrine to the memory of Jefferson Davis, President of the Confederacy, and is administered by a board of trustees. The entire chapter 1, Title 27, Volume 5A, Mississippi Code Annotated sections 7447 through 7461 (1952), concerns Beauvoir. There can be no question concerning what property was intended to be excluded from the description in the annexation ordinance.

We find no reversible error and the decree of the chancellor is affirmed.

Affirmed.

LEE, C. J., and JONES, BRADY and INZER, JJ., concur.

APPENDIX "D"

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY, OCTOBER 25, 1965, Court Sitting : : : : : : :

DOROTHY E. BRIDGES
vs. No. 43,671
CITY OF BILOXI, MISSISSIPPI

This cause this day came on to be heard on the Suggestion of Error filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said Suggestion of Error be and the same is hereby overruled.

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APPENDIX "E"

Dorothy E. BRIDGES
v.
CITY OF BILOXI, Mississippi.

No. 43671.

Supreme Court of Mississippi.

Nov. 15, 1965.

Proceeding involving extension of limits of city. The Chancery Court, Harrison County, Robert R. Butin, Chancellor, entered decree approving the ordinance, and appeal was taken. The Supreme Court, 178 So. 2d 683, affirmed. Suggestion of error was overruled, and appellant moved for stay and appellee moved for issuance of mandate. The Supreme Court, Gillespie, J., held that $500 cost bond and notice of appeal to Supreme Court of the United States did not operate as supersedeas which could stay issuance of mandate to chancery court.

Motion for stay overruled; motion to issue mandate sustained.

1. *Appeal and Error* — 483

Statutes permitting party aggrieved by decree of chancellor to prosecute appeal as in appeals from decree regarding creation of municipal corporation and permitting appeal by furnishing $500 bond which shall operate as supersedeas did not concern appeals from Supreme Court of Mississippi to Supreme Court of the United States. Code 1942, §§ 3374-08, 3374-14; Rules of Supreme Court, rule 18, 28 U.S.C.A.

2. *Appeal and Error* — 483

$500 cost bond and notice of appeal to Supreme Court of the United States did not operate as supersedeas which

could stay issuance of mandate of Supreme Court of Mississippi to chancery court which had approved ordinance extending limits of a city. Rules of Supreme Court, rules 10, 18, 28 U.S.C.A.; Code 1942, §§ 3374-08, 3374-13, 3374-14.

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Upton Sisson, Gulfport, Wm. Joel Blass, Wiggins, Herman Smith, Gulfport, Forrest B. Jackson, Jackson, for appellant.

Watkins, Pyle, Edwards & Ludlam, Jackson, Charles K. Pringle and Albert Sidney Johnston, Jr., Biloxi, for appellee.

GILLESPIE, Justice.

The appellant, Dorothy E. Bridges, gave notice of appeal to the Supreme Court of the United States pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States, and filed a bond in the penal sum of $500 binding the obligors to promptly pay and satisfy all costs and damages that may accrue against the appellants.

Appellant has also filed a motion for a stay of the mandate of this Court and for the approval by this Court of the appeal bond. Appellant contends that the $500 cost bond operates as a supersedeas so as to stay the issuance of the mandate to the chancery court. In other words, appellant contends that under Mississippi Code Annotated section 3374-14 (1956), a $500 cost bond operates as a supersedeas under the authority of Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

Mississippi Code Annotated section 3374-14 (1956) is as follows:

> If the municipality or any other interested person who was a party to the proceedings in the chancery court be aggrieved by the decree of the chancellor, then such municipality or other person many prosecute an appeal therefrom within the time and in the manner and with like effect as is provided above in the case of appeals from the decree of the chancellor with regard to the creation of a municipal corporation.

The statute governing appeals from the decree of the chancellor with regard to the creation of a municipal corporation is Mississippi Code Annotated section 3374-08 (1956), which is as follows:

> Any person interested in or aggrieved by the decree of the chancellor, and who was a party to the proceedings in the chancery court, may prosecute an appeal therefrom to the supreme court within ten (10) days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars ($500.00) with two good and sufficient sureties, conditioned to pay all costs of the appeal in event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk and shall operate as a supersedeas. If the decree of the chancellor be affirmed by the supreme court, then such decree shall go into effect after the passage of ten (10) days from the date of the final judgment thereon, and the party or parties prosecuting such appeal and the sureties on their appeal bond shall be adjudged to pay all costs of such appeal.

[1] The two code sections govern appeals to this Court from decrees of the chancery court in proceedings to enlarge, extend, modify and define the corporate limits of a city, and provide that a $500 bond "shall operate

as a supersedeas." This statute does not concern appeals from the Supreme Court of Mississippi to the Supreme Court of the United States.

The matter of supersedeas on appeal to the Supreme Court of the United States is governed by Rule 18, Revised Rules of the Supreme Court of the United States. It provides that whenever an appellant entitled thereto desires a stay on appeal, he may present to a judge of the court whose decision is sought to be reviewed a motion to stay the enforcement of the judgment, with which, if the stay is to act as a supersedeas, shall be tendered a supersedeas bond. No supersedeas bond has been tendered.

The ordinance extending the city limits of Biloxi became effective on May 3, 1962, and this Court rendered its opinion affirming the chancellor's decree approving said ordinance on October 11, 1965. Under the provisions of Mississippi Code Annotated section 3374-13 (1956), the decree of the chancellor in such matters becomes effective, in event an appeal is taken from his decree to this Court, within ten days from the date of the final determination of the appeal by this Court. The suggestion of error filed by appellant was overruled on October 25, 1965. Therefore, this Court has finally determined the appeal and the decree of the chancellor approving the ordinance has become final. Only a supersedeas granted by a Judge of this Court, or by the Court itself, or by a Judge of the Supreme Court of the United States could stay the issuance of the mandate of this Court to the Chancery Court of Harrison County.

[2] We hold that the $500 cost bond and the notice of appeal to the Supreme Court of the United States does not operate as a supersedeas. No supersedeas bond has

been tendered and the motion for the stay of mandate is overruled. The motion of the City of Biloxi to direct the clerk to prepare and deliver the mandate of this Court to the Clerk of the Chancery Court of Harrison County, Mississippi, is sustained.

Motion for stay overruled; motion to issue mandate to the trial court sustained.

LEE, C. J., and JONES, BRADY and INZER, JJ., concur.

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APPENDIX "F"

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

MOTION TO FIX AMOUNT OF SUPERSEDEAS BOND AND TO STAY JUDGMENT AND MANDATE UPON FILING THEREOF.

TO THE HONORABLE SUPREME COURT OF MISSISSIPPI:

Now comes Dorothy E. Bridges, Appellant, and moves this Honorable Court to determine and fix the amount of a Supersedeas Bond to be filed by Appellant, and upon the filing thereof to stay the Judgment rendered herein on October 4, 1965, and a final order entered herein on November 15, 1965, overruling motion of Appellant for stay and sustaining motion of Appellee to issue mandate, as authorized and provided for by Rule 18 of the Rules of the Supreme Court of the United States and by the Rules of this Court, and in support hereof respectfully shows the following:

1

That the judgment of this Court of October 4, 1965, became final on October 25, 1965, upon the judgment entered here overruling the Suggestion of Error.

2

That on October 26, 1965, an informal Notice of Appeal by telegram was given herein with service on Appellee through its counsel.

3

That formal Notice of Appeal to the United States Supreme Court was given herein on November 1, 1965, less than 10 days after final judgment herein, under and pursuant to Rule 10 of the Supreme Court of the United States, with proper service on City of Biloxi, Mississippi, Appellee, and its counsel of Record herein, reference thereto being made in aid of this motion.

4

That by decision of this Honorable Court herein on November 15, 1965, with $500.00 bond tendered with the Motion for Appeal with Supersedeas on November 1, 1965, it was held that said bond and Notice of Appeal does not operate as a Supersedeas; that the Motion for Stay was overruled; that the Motion to Issue Mandate to the trial court was sustained. The Decision, while rejecting the $500.00 bond tendered to act as a Supersedeas, failed to fix any different amount as being the proper and appropriate amount of bond for Supersedeas, although prayed for in Appellant's Motion.

Wherefore, Appellant respectfully moves the Court to determine and fix the amount of a Supersedeas Bond to stay the Judgment herein pending a final determination of the Appeal to the United States Supreme Court.

Respectfully,

DOROTHY E. BRIDGES, APPELLANT

BY: UPTON SISSON and
FORREST B. JACKSON
Attorneys for Appellant

BY: _____
Of Counsel.

CERTIFICATE OF SERVICE

I, Upton Sisson, of Counsel for Appellant, do hereby certify that on the 19th day of November, 1965, I served a true and correct copy of the above and foregoing Motion on the Appellee by mailing the same, First Class, United States Mail, Postage Prepaid, to Honorable Charles K. Pringle, P. O. Box 292, Biloxi, Mississippi, Zip Code No. 39530; to Honorable Albert Sidney Johnston, Jr., P. O. Box 214, Biloxi, Mississippi, Zip Code No. 39530, and to Honorable L. Arnold Pyle, of Watkins, Pyle, Edwards and Ludlam, Deposit Guaranty Bank Building, Jackson, Mississippi, counsel of record for said Appellee.

Witness my signature this 19th day of November, 1965.

Of Counsel for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

BRIEF ON MOTION TO FIX AMOUNT OF SUPERSEDEAS BOND AND TO STAY JUDGMENT AND MANDATE UPON FILING THEREOF.

MAY IT PLEASE THE COURT:

PRELIMINARY STATEMENT

Appellant has herein filed Notice of Appeal, pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States; Motion for Stay of Mandate, pursuant to Rule 18 of said Rules, which said Motion for Stay of Mandate was accompanied by bond in the sum of $500.00 but denied and rejected by this Honorable Court as Supersedeas in its decision of November 15, 1965.

Appellant has now filed Motion to Fix Amount of Supersedeas Bond and To Stay Judgment and Mandate Upon Filing Thereof, and this Brief is offered for consideration thereon.

STATEMENT OF FACTS

This cause was affirmed on appeal hereon October 4, 1965, and judgment entered accordingly.

On October 25, 1965, the Suggestion of Error, theretofore promptly filed by the Appellant, was overruled and final judgment entered herein by this Court.

On October 26, 1965, at 10:30 A.M., Appellant by her Counsel, by Western Union Telegram gave Notice of Appeal, by filing such telegram with the Clerk of this Court, and by service by telegram of said Notice of Appeal on Appellee through its Counsel.

On October 28, 1965, Counsel for Appellee filed herein its formal written Motion and Brief for the immediate issuance of said mandate.

On November 15, 1965, this Honorable Court overruled Appellant's said motion and sustained the said motion of Appellee.

BRIEF AND ARGUMENT

1

APPELLANT IS ENTITLED TO STAY OF JUDGMENT

It is respectfully submitted that Appellant is entitled to a stay of the judgment of this Honorable Court pending a final determination thereof on Appeal to the United States Supreme Court upon the filing of a Supersedeas Bond as provided by Rule 10 and Rule 18, *Revised Rules of the Supreme Court of the United States.*

It is respectfully submitted that by the ruling of this Honorable Court herein on November 15, 1965, Appellant is precluded from her right of appeal with stay of judgment unless the Court now determine and fix the amount of a reasonable and proper supersedeas bond as authorized and provided for by Rule 18 of the *Rules of the Supreme Court of the United States.*

It is most respectfully submitted that no damage can accrue in favor of Appellee by reason of its failure to acquire the area sought to be annexed during the pend-

ency of an appeal to which the Appellant is legally entitled under the law. To require of the Appellant a large and impossible bond will defeat and deprive her of her legal right of appeal. To hold that Appellant would be liable in damages to Appellee for the loss of taxes during pendence of the appeal is without foundation or authority in law.

CONCLUSION

We, therefore, respectfully urge that the Court, upon due consideration, determine and fix a reasonable, just and appropriate bond to act as Supersedeas pending appeal herein to the United States Supreme Court.

Respectfully,

Dorothy E. Bridges, Appellant

BY: UPTON SISSON and
FORREST B. JACKSON

BY: _____
Attorneys for Appellant

CERTIFICATE OF SERVICE

I, Upton Sisson, of Counsel for Appellant, do hereby certify that on the 19th day of November, 1965, I served a true and correct copy of the above and foregoing Brief on the Appellee by mailing the same, First Class, United States Mail, Postage Prepaid, to Honorable Charles K. Priggle, P. O. Box 292, Biloxi, Mississippi, Zip Code No. 39530; to Honorable Albert Sidney Johnston, Jr., P. O. Box 214, Biloxi, Mississippi, Zip Code No. 39530, and to Honorable L. Arnold Pyle, of Watkins, Pyle, Edwards and Ludlan, Deposit Guaranty Bank Building, Jackson, Mississippi, counsel of record for said Appellee.

Witness my signature this 19th day of November, 1965.

Of Counsel for Appellant

APPENDIX "G"

§ 3374-10. *Extension or contraction of corporate boundaries.*

The limits and boundaries of existing cities, towns and villages shall remain as now established until altered in the manner hereinafter provided. When any municipality shall desire to enlarge or contract the boundaries thereof by adding thereto adjacent unincorporated territory or excluding therefrom any part of the incorporated territory of such municipality, the governing authorities of such municipality shall pass an ordinance defining with certainty the territory which it is proposed to include in or exclude from the corporate limits, and also defining the entire boundary as changed. In the event the municipality desires to enlarge such boundaries, such ordinance shall in general terms describe the proposed improvements to be made in the annexed territory and the manner and extent of such improvements and the approximate time within which such improvements are to be made, and such ordinance shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory. In the event the municipality shall desire to contract its boundaries, such ordinance shall contain a statement of the reasons for such contraction and a statement showing whereby the public convenience and necessity would be served thereby. [Supersedes § 3376, Code of 1942.]

APPENDIX "H"

§ 3374-11. *Proceedings in chancery court.*

When any such ordinance shall be passed by the municipal authorities, such municipal authorities shall file a petition in the chancery court of the county in which such municipality is located, which said petition shall recite the fact of the adoption of such ordinance and shall pray that the enlargement or contraction of the municipal boundaries, as the case may be, shall be ratified, approved and confirmed by the court. There shall be attached to such pertition, as exhibits thereto, a certified copy of the ordinance adopted by the municipal authorities and a map or plat of the municipal boundaries as they will exist in event such enlargement or contraction becomes effective.

SOURCES: Laws, 1950, ch. 491, § 11.

APPENDIX "I"

§ 3374-12. *Hearing on petition.*

Upon the filing of such petition and upon application therefor by the petitioner, the chancellor shall fix a date certain, either in term time or in vacation, when a hearing on said petition will be held, and notice thereof shall be given in the same manner and for the same length of time as is above provided with regard to the creation of municipal corporations, and all parties interested in, affected by, or being aggrieved by said proposed enlargement or contraction shall have the right to appear at such hearing and present their objection to such proposed enlargement or contraction. It is expressly provided, however, in all cases of the enlargement of municipalities where any of the territory proposed to be incorporated is located within three miles of another existing municipality, then such other existing municipality shall be made a party defendant to said petition and shall be served with process in the manner provided by law, which process shall be served at least thirty (30) days prior to the date set for the hearing.

SOURCES: Laws, 1950, ch. 491, § 12.

APPENDIX "J"

§ 3374-13. *Decree of chancellor.*

If the chancellor finds from the evidence presented at such hearing that the proposed enlargement or contraction is reasonable and is required by the public convenience and necessity and, in the event of an enlargement of a municipality, that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time, the chancellor shall enter a decree approving, ratifying and confirming the proposed enlargement or contraction, and describing the boundaries of the municipality as altered, but in so doing the chancellor shall have the right and the power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from such municipality, as the case may be. If the chancellor shall find from the evidence that the proposed enlargement or contraction, as the case may be, is unreasonable and is not required by the public convenience and necessity, then he shall enter a decree denying such enlargement or contraction. In any event, the decree of the chancellor shall become effective after the passage of ten (10) days from the date thereof or, in event an appeal is taken therefrom, within (10) days from the final determination of such appeal. In any proceeding under this section the burden shall be upon the municipal authorities to show that the proposed enlargement or contraction is reasonable.

SOURCES: Laws, 1950, ch. 491, § 13.

APPENDIX "K"

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "L"

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arsing in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX "M"

§ 1983. *Civil action for deprivation of rights.*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

APPENDIX "N"

§ 3374-04. *Publication of notice.*

After the filing of said petition, and upon request therefor by the petitioners, the chancellor shall set a day certain, either in term time or in vacation, for the hearing of such petition and notice shall be given to all persons interested in, affected by, or having objections to the proposed incorporation, that the hearing on the petition will be held on the day fixed by the chancellor and that all such persons will have the right to appear and enter their objections, if any, to the proposed incorporation. The said notice shall be given by publication thereof in some newspaper published or having a general circulation in the territory proposed to be incorporated once each week for three consecutive weeks, and by posting a copy of such notice in three or more public places in such territory. The first publication of such notice and the posted notice thereof shall be made at least thirty (30) days prior to the day fixed for the hearing of said petition, and such notice shall contain a full description of the territory proposed to be incorporated. It is expressly provided, however, that if any of the territory proposed to be incorporated is located within three (3) miles of the boundaries of an existing municipality, then such existing municipality shall be made a party defendant to such petition and shall be served with process in the manner provided by law, which process shall be served at least thirty (30) days prior to the date set for the hearing.

SOURCES: Laws, 1950, ch. 491, § 4.

APPENDIX "O"

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

NO. 45,112.

IN THE MATTER OF THE EXTENSION OF THE BOUNDARIES OF THE CITY OF BILOXI, MISSISSIPPI

GENERAL DEMURRER

Now come the Objectors by and through their counsel of record, and demur to the Petition filed by the City of Biloxi to confirm, approve and ratify Ordinance No. 1035, and in support of said demurrer assign the following grounds therefor:

1.

There is no equity on the face of the bill.

2.

That the relief sought by the Petition is violative of the Section 14 of the Mississippi Constitution.

3.

That the relief sought by the Petition is violative of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

4.

That the relief sought by the Petition is violative of the Fifth Amendment to the United States Constitution.

5.

That the relief sought by the Petition is violative of the Federal Civil Rights Act, 17 Stat. L. 13 and 16 Stat. L. 144, 42 U. S. C. Sec. 1983.

Respectfully submitted, this 15th day of June, 1964.

WILLIAM JOEL BLASS, Attorney at Law
Wiggins, Mississippi

UPTON SISSON, Attorney at Law
Gulfport, Mississippi

BY: Upton Sisson
Of Counsel for the Objectors

CERTIFICATE

I, UPTON SISSON, of counsel for the Objectors in the above styled and numbered cause, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing General Demurrer to Honorable L. Arnold Pyle of the law firm Watkins, Pyle, Edwards & Ludlam, Jackson, Mississippi; Hon. Charles K. Pringle, Attorney at Law, Biloxi, Mississippi, and Hon. Albert Sidney Johnston, Jr., Attorney at Law, Biloxi, Mississippi, postage prepaid, deposited in the United States Mail.

WITNESS MY SIGNATURE, this 15th day of June, 1964.

Upton Sisson
Of Counsel for Objectors

APPENDIX "P"

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

IN VACATION 1964

NO. 45,112.

IN THE MATTER OF THE EXTENSION OF THE BOUNDARIES OF THE CITY OF BILOXI, MISSISSIPPI

ORDER OVERRULING DEMURRER

This cause came on this day for hearing upon Demurrer of the Objectors filed herein on June 16, 1964, and the Court having heard said Demurrer and considered same, together with argument of respective counsel, is of the opinion that said Demurrer is not well taken and should be overruled; it is therefore

ORDERED, ADJUDGED AND DECREED, that the Demurrer of the Objectors filed June 16, 1964 be, and the same is hereby overruled.

THUS ORDERED, ADJUDGED AND DECREED this 29th day of June, 1964.

Robert R. Buntin
CHANCELLOR

APPENDIX "Q"

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671.

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice, pursuant to Rule 10 of the Supreme Court of the United States, is hereby given that Dorothy E. Bridges, the appellants above named, hereby appeals to the Supreme Court of the United States from the final judgments of affirming, and of overruling Suggestion of Error, entered in this action on appeal on October 4, 1965 and on October 25, 1965.

This appeal is taken pursuant to 28 *U.S.C.A.*, Section 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The Petition with exhibits thereto by the City of Biloxi, Mississippi, for the approval of the Ordinance of said City of Biloxi, Mississippi, for the annexation of territory to and the extension and enlargement of the boundaries of said municipality (R. 2-14).

2. Demurrer (R. 20-21).

3. Order sustaining Demurrer (R. 26).

4. Supplemental and Amended Petition for Ratification, etc., of Ordinance extending and enlarging boundaries of the City of Biloxi, Mississippi, with Exhibit "A" and Exhibit "B" (R. 28-34-42).

5. Plea in Bar (R. 51).

6. Objections to Ratification of Ordinance extending and enlarging boundaries of City of Biloxi (R. 55 through 80).

7. Order Overruling Plea in Bar (R. 101).

8. Testimony of Mr. William F. Wyatt (R. 713 through 799).

9. Exhibits 33 through 50, inclusive (R. 511 through 798).

10. Testimony of Mr. William K. Dukate (R. 503).

11. Testimony of Mr. J. A. Creel (R. 590).

12. Testimony of Mayor Daniel D. Guice (R. 800).

13. Proceedings at conclusion of Mayor Guice's Testimony when Petitioner rested its case (R. 869 through 879).

14. Opinion of Trial Court (R. 1903).

15. Final Decree (R. 1911).

16. Assignment of Errors.

17. Brief for Appellant.

18. Brief for Appellee.

19. Opinion of this Court of October 4, 1965.

20. Judgment of this Court of October 4, 1965.

21. Judgment of this Court overruling the Suggestion of Error on October 25, 1965.

22. Notice of Appeal to Supreme Court of the United States.

23. Application for Stay of Mandate and Fixing Bond and Briefs thereon.

24. Order thereon.

25. Bond.

III. The following questions are presented by this appeal:

1. The Statute (§§ 3374-10 through 3374-16, *Mississippi Code of* 1942, *Recompiled*, being Chapter 491, *Laws of Mississippi*, 1950) is contrary to, and in violation of the prohibitions of the Fourteenth Amendment to the Constitution of the United States, both the due process and the equal protection of law clauses thereof, in this that the property of Objectors in the proposed annexed area of the proposed expansion and extension of the municipal corporate limits is subjected to taxation retrospectively for payment of municipal debt created prior to annexation without any corresponding benefits accruing to said property in the annexed area and without Objectors being granted any right of voting on, receiving notice of, or having the opportunity of objecting to or protesting the proposed burden.

2. Likewise, the construction placed upon said statute, by the adoption of the Ordinance of Expansion and Extension by the municipality, by the decision of the Chancery Court of Harrison County, Mississippi, and by the Supreme Court of Mississippi violates the Constitutional

guaranties of the Fourteenth Amendment and the Fifth Amendment, and thereby said Ordinance is void.

3. That proposed extension and expansion of the City of Biloxi, Mississippi, amounts to a taking of property of Objectors-Appellant as taxpayers and citizens, without due process of law and is a denial of equal protection of law guaranteed by the said Fourteenth and Fifth Amendments in this that the citizens and taxpayers in the affected expansion area, were granted no right or privilege of objecting or protesting by vote or otherwise upon the proposition either by a vote for or against the officials legislating on the proposal or upon the proposal itself.

This November 1, 1963.

/S/ Forrest B. Jackson
Attorney for Dorothy E. Bridges, Appellants
Address: P. O. Box 124
425 Tombigbee Street,
Jackson, Mississippi 39205

PROOF OF SERVICE.

I, Faye Shannon, a Secretary in the office of Forrest B. Jackson, Attorney of Record for Dorothy E. Bridges, Appellant herein, depose and say that on the 1st day of November, 1965, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, on the City of Biloxi, Mississippi, Appellee, by delivering the same to the receptionist in the offices of Judge L. Arnold Pyle, of Watkins, Pyle, Edwards and Ludlam, counsel of record for said City of Biloxi, Mississippi, Appellee, located in the Deposit Guaranty Bank Building, at Jackson, Mississippi, and, by mailing, First Class United State mail, postage prepaid, to Honorable Charles K. Pringle, P. O. Box 292, Biloxi, Mississippi, Zip Code No. 39530, and to Honorable Albert Sidney Johnston, Jr., P. O. Box No. 214, Biloxi, Mississippi, Zip Code No. 39530, also counsel of record for said Appellee.

/S/ Faye Shannon

Subscribed and sworn to before me, at Jackson, Hinds County, Mississippi, this 1st day of November, 1965.

/S/ Peggy P. Grice
Notary Public in and for Hinds County, Mississippi

[Seal]

My Commission expires Feb. 11, 1968.

APPENDIX "R"

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671.

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

MOTION FOR STAY OF MANDATE AND APPROVAL OF BOND ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

TO THE HONORABLE SUPREME COURT OF MISSISSIPPI:

Now comes Dorothy E. Bridges, Appellant, and moves this Honorable Court to stay the issuance and delivery to the Clerk of the Chancery Court of Harrison County, Mississippi, of the mandate herein of this Court, pursuant to the decision and judgment of this Court entered on October 4, 1965 and the final order entered on October 25, 1965, overruling the Suggestion of Error and to fix and approve the bond and security tendered herewith as provided by Rule 18 of the Rules of the Supreme Court of the United States, by the Rules of this Court, and by Section 3374-14 and Section 3374-08, *Mississippi Code of* 1942, *Recompiled,* and in support hereof respectfully shows the following:

1.

That the judgment of this Court of October 4, 1965 became final on October 25, 1965, upon the judgment or order entered here overruling the Suggestion of Error.

2.

That on October 26, 1965, an informal Notice of Appeal by telegram was given herein with service on Appellee through its counsel.

3.

That formal Notice of Appeal is this November 1, 1965, less than 10 days after final judgment herein, filed herein under and pursuant to Rule 10, of the Supreme Court of the United States, with proper service on City of Biloxi, Mississippi, Appellee, and its counsel of Record herein, reference thereto being made in aid of this motion.

4.

That by decision of this Honorable Court in *Dodd v. City of Jackson, Mississippi,* 238 Miss. 372, 118 So. 2d 319, 332-333, the bond herewith tendered has been deemed sufficient in amount under the will and intent of the Legislature as expressed in the Statutes construed, to justify and to require the stay requested.

5.

That by Section 3374-13 of the *Mississippi Code of* 1942, *Recompiled,* it is expressly provided:

> "In any event, the decree of the Chancellor shall become effective after the passage of ten (10) days from the date thereof or, *in event an appeal is taken therefrom within ten* (10) *days from the final determination of such appeal.*" (Emphasis ours).

Compare: Sections 3374-14 and 3374-05, and there is not any "*final determination*" of an appeal until the time for perfecting such appeal to the Supreme Court of the United States has expired, or until that Court has finally acted upon the appeal now in process of being perfected to that Court, neither of which has occurred.

And grounds and causes apparent.

Wherefore, Appellant now offering, as may be required, to prepay all costs herein and to do as this Honorable Court may direct in the premises, prays that this Motion be sustained.

Respectfully,

DOROTHY E. BRIDGES, Appellant

BY: UPTON SISSON and
FORREST B. JACKSON
Attorneys for Appellant

BY: /S/ Forrest B. Jackson
Of Counsel.

CERTIFICATE OF SERVICE

I, Faye Shannon, a Secretary in the office of Forrest B. Jackson, Attorney of Record for Dorothy E. Bridges, Appellant herein, certify on the 1st day of November, 1965, I served a copy of the foregoing MOTION FOR STAY OF MANDATE AND APPROVAL OF BOND ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES, on the City of Biloxi, Mississippi, Appellee, by delivering the same to the receptionist in the office of Judge L. Arnold Pyle, of Watkins, Pyle, Edwards and Ludlam, Counsel of Record for said City of Biloxi, Mississippi, Appellee, located in the Deposit Guaranty Bank Building, at Jackson, Mississippi, and, by mailing, First Class, United States mail, postage prepaid, to Honorable Charles K. Pringle, P. O. Box 292, Biloxi, Mississippi, Zip Code No. 39530, and to Honorable Albert Sidney Johnston, Jr., P. O. Box No. 214, Biloxi, Mississippi, Zip Code No. 39520, also counsel of record for said Appellee.

/S/ Faye Shannon

APPENDIX "S"

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671.

DOROTHY E. BRIDGES.....Appellant

vs.

CITY OF BILOXI, MISSISSIPPI.....Appellee

BOND ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned Dorothy E. Bridges, et al, Appellants, principal obligor, and The Employers Liability Assurance Corporation of Boston, Ltd., as Surety, are held and firmly bound to the City of Biloxi, Mississippi, Appellee, in the penal sum of Five Hundred ($500.00) Dollars, payment of which we promise and undertake to pay and perform.

But, upon the condition, nevertheless, that said principal obligor herein is applying for and has prayed for and obtained an appeal from the Supreme Court of Mississippi to the Supreme Court of the United States of America from a final judgment of said state court of October 4, 1965 and of October 25, 1965; and

Now, if said Appellants, the principal obligor herein, shall prosecute said appeal with effect and shall promptly pay and satisfy all costs and damages that may herein accrue or be assessed against said Appellants, the prin-

cipal obligor, then this obligation shall be null and void; otherwise to remain in full force, virtue and effect.

This November 1, 1965.

Dorothy E. Bridges, et al, Appellants
By /S/ Forrest B. Jackson
Of Counsel. Principal Obligors.

The Employers Liability Assurance Corporation of Boston, Ltd.,

By /S/ B. R. Albritton
Attorney-in-fact. Surety.

[Seal].

The above and foregoing bond filed and approved by me as to amount and as to surety, this the 1st day of November, A. D. 1965.

Chief Justice of the Supreme Court of Mississippi.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671.

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

BRIEF ON MOTIONS TO STAY AND TO PREPARE AND DELIVER MANDATE.

MAY IT PLEASE THE COURT:

PRELIMINARY STATEMENT

Appellant has herein filed Notice of Appeal, pursuant to Rule 10, of the Revised Rules of the Supreme Court, and Motion for Stay of Mandate, pursuant to Rule 18, of said Rules, which said Motion for Stay of Mandate is accompanied by bond in the penal sum of $500.00, as provided by Section 3374-08, *Mississippi Code of* 1942, *Recompiled.*

Appellee has herein filed Motion to authorize and direct the Clerk of this Court to prepare and deliver immediately the Mandate to the Clerk of the Chancery Court of Harrison County, Mississippi.

This Brief will be offered for consideration on both of said Motions.

STATEMENT OF FACTS

This cause was affirmed on appeal here on October 4, 1965 and judgment entered accordingly.

On October 25, 1965, the Suggestion of Error, theretofore promptly filed by the Appellant, was overruled and final judgment herein entered by this Court.

On October 26, 1965, at 10:30 A. M., Appellant by her Counsel, by Western Union Telegram, gave Notice of Appeal, by filing such telegram with the Clerk of this Court, and by service by telegram of said Notice of Appeal on Appellee through its Counsel.

Within moments thereafter Counsel for City of Biloxi, Mississippi, Appellee, presented to the Clerk of this Court and to this Honorable Court, a check for payment of accrued costs and oral demand for the forthwith and immediate preparation and delivery of the Mandate on that very same date.

On October 28, 1965 (but not seen by Counsel for Appellant until the morning of October 29, 1965), Counsel for Appellee filed herein its formal written motion and Brief for the immediate issuance of said Mandate, although the ten (10) days provided by Section 3374-13, *Mississippi Code of* 1942, *Recompiled,* will not expire until November 4th, 1965, and the time for appeal to the Supreme Court of the United States has not yet expired (Title 28 *U.S.C.A.,* Sec. 2101(c))

BRIEF AND ARGUMENT.

1.

APPELLANT IS ENTITLED TO STAY OF MANDATE UNTIL APPEAL IS CONCLUDED.

Here the Appellant has acted within the requirements of the statutes, the rules and the decisions in promptly giving Notice of Appeal and taking requisite steps to perfect the appeal and the Mandate should be stayed until there is "final determination of such appeal."

Sec. 3374-13, *Mississippi Code,* 1942.

Wherewith compare:

Sec. 3374-05 and Sec. 3374-14, *Mississippi Code* 1942.

See also:

Rule 10 and Rule 18, *Revised Rules of the Supreme Court of the United States.*

Under Former Rule 36, before Revision, see:

Stewart v. Masterson, 124 U.S. 493, 31 L. Ed. 507;
Brown v. McConnell, 124 U.S. 489, 31 L. Ed. 495;

Compare: *Schemp v. School District, etc.,* 184 F. Supp. 381.

The appeal now having been formally perfected by giving the *Notice of Appeal,* there is nothing left, with deference, for this Court to do, except determine whether to stay or not to stay Mandate.

2.

MATTER OF STAY IN DISCRETION OF COURT EXCEPT FOR STATUTE AS TO EFFECTIVE DATE OF EXPANSION.

For orderly procedure, the stay should be granted, because under the statute (a special proceeding with conferring of special jurisdiction upon the Chancery Court), the Ordinance cannot take effect until "*Ten* (10) *days from the final determination of such appeal.*"

Sec. 3374-13, *Mississippi Code,* 1942.
And, see: Sec. 3374-14 and Sec. 3374-05.

3.

AMOUNT OF BOND ON APPEAL FOR SUPERSEDEAS AND STAY IS FIXED BY THE STATUTE.

You have established the precedent (contrary to contention of counsel in this very case) that the Legislature

has fixed the amount of the bond at $500.00 which *"shall operate as a supersedeas."*

Section 3374-08, *Mississippi Code*, 1942, *Recompiled.* Compare: *Headnote* 9:

Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319, at pages 332 and 333.

We submit, with deference, that any further requirement as to bond for stay of Mandate, might give use to the principle enunciated by you—"That rank injustice might occur in the arbitrary inclusion of a small taxpayer, and that he would be deterred from an appeal out of fear that he would lose all of his property on account of a large cost bill."

Dodd v. City of Jackson, above.

Since all costs must be prepaid on this appeal to the Supreme Court of the United States and deposits in cash therefor may be required by the Clerks of this Court and the Supreme Court of the United States, there is full protection and justice will prevail. Maybe the determination finally will be delayed but even "The mills of the gods grind slowly" and Life moves but swiftly when it appears to be slowly.

Here there is a principle of fundamental rights of the citizen and his property involved that should be considered and determined only "with all deliberate speed." No prejudice or discrimination will or can result to Appellee regardless of the delay.

4.

REPLY TO CITY'S BRIEF.

We submit, most respectfully, that the foregoing completely answers every contention and argument made by

and on behalf of Appellee, City of Biloxi, by its eminent and illustrious Counsel and to say more would only consume the time of this Court and give no further enlightenment on the real issues involved.

CONCLUSION

We respectfully, therefore, urge, with deference, that the Motion for Stay of Mandate and approval of tendered Bond, should be sustained and Motion of Appellee, City of Biloxi, overruled.

Respectfully,
Dorothy E. Bridges, Appellants-Objector
BY: UPTON SISSON and
FORREST B. JACKSON
By: /S/ Forrest B. Jackson
Attorneys for Appellants.

CERTIFICATE OF SERVICE

I, Faye Shannon, a Secretary in the office of Forrest B. Jackson, Attorney of Record for Dorothy E. Bridges, Appellant herein, CERTIFY on the 1st day of November, 1965, I served a copy of the foregoing BRIEF ON MOTIONS TO STAY AND TO PREPARE AND DELIVER MANDATE, on the City of Biloxi, Mississippi, Appellee, by delivering the same to the receptionist in the office of Judge L. Arnold Pyle, of Watkins, Pyle, Edwards and Ludlam, Counsel of Record for said City of Biloxi, Mississippi, Appellee, located in the Deposit Guaranty Bank Building, at Jackson, Mississippi, and by mailing, First Class, United States mail, postage prepaid, to Honorable Charles K. Pringle, P. O. Box 292, Biloxi, Mississippi, Zip Code No. 39530, and to Honorable Albert Sidney Johnston, Jr., P. O. Box No. 214, Biloxi, Mississippi, Zip Code No. 39530, also counsel of record for said Appellee.

/S/ Faye Shannon

APPENDIX "T"

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 43,671

DOROTHY E. BRIDGES.....Appellant

vs.

CITY OF BILOXI, MISSISSIPPI.....Appellee

MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO PERFECT APPEAL AND DOCKET CASE IN UNITED STATES SUPREME COURT.

TO HONORABLE JUSTICE GILLESPIE:

Now comes the Appellant, Dorothy E. Bridges, and moves the Court to grant an additional 60 days time within which to perfect the Appeal and Docket this Case in the United States Supreme Court, and in support of said Motion, would respectfully show unto the Court as follows.

1. The official Notice of Appeal from the judgment of the Mississippi Supreme Court to the United States Supreme Court was filed herein on November 1, 1965.

2. That since the giving of the original Notice of Appeal several motions have been presented to and passed upon by this Honorable Court, during which period of time the matter of preparing the record for appeal to the United States Supreme Court was held in abeyance by the Clerk of the Mississippi Supreme Court.

3. That Appellant, now advised by the Clerk of the Mississippi Supreme Court that additional time will be required by her within which to complete the record for

appeal and transmission to the United States Supreme Court.

WHEREFORE, Appellant respectfully moves and requests this Honorable Court to grant an enlargement of 60 days time within which to perfect the appeal and docket the case in the United States Supreme Court as provided by Rule 13 of the Rules of the Supreme Court of the United States.

Respectfully,

DOROTHY E. BRIDGES, Appellant

BY: UPTON SISSON and
FORREST B. JACKSON
Attorneys for Appellant

BY: _____
Of Counsel

Upton Sisson
Attorney at Law
1913 - 15th Street
Gulfport, Miss.

Forrest B. Jackson
Attorney at Law
P. O. Box 124
Jackson, Mississippi

APPENDIX "U"

IN THE SUPREME COURT OF MISSISSIPPI

FRIDAY, DECEMBER 17, 1965, Court Sitting : : : : : :

DOROTHY E. BRIDGES

vs. No. 43,671

CITY OF BILOXI, MISSISSIPPI

This cause this day came on to be heard on the Motion of the appellant, Dorothy E. Bridges for enlargement of the time within which to perfect the appeal and docket the case in the Supreme Court of the United States and the Court having considered said Motion and being of the opinion that the Motion is well taken and should be sustained doth order and adjudge that said Motion be and the same is hereby sustained and the appellant, Dorothy E. Bridges, is granted an enlargement of 30 days time within which to perfect the appeal and docket the case in the Supreme Court of the United States as provided by Rule 13 of the Rules of the Supreme Court of the United States.

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Office-Supreme Court, U.S.
FILED
FEB 14 1966
JOHN F. DAVIS, CLERK

No. 923

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MOTION TO DISMISS

L. ARNOLD PYLE
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ALBERT SIDNEY JOHNSTON, JR.
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Biloxi, Mississippi

Attorneys for Appellee

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No._____

DOROTHY E. BRIDGES_____Appellant

vs.

CITY OF BILOXI, MISSISSIPPI_____Appellee

MOTION TO DISMISS

The appellee, City of Biloxi, Mississippi, moves the Court to dismiss the appeal filed herein upon the ground that the appellant poses no substantial question under the United States Constitution and there is no necessity for further argument or proceedings in this Court.

I.

THE STATUTES INVOLVED

The appellant questions the validity of the Mississippi statutes providing for the extension of municipal boundaries by the annexation of unincorporated territory. These statutes, Section 3374.04, and 3374.10 through 3374.13, Mississippi Code Annotated (1942), Recompiled, are recited in full in the appellee's Jurisdictional Statement (Appendix "G", "H", "I", "J" and "N").

Section 3374.10 provides that the governing authorities of a municipality desiring to enlarge its boundaries shall pass an ordinance defining with certainty the territory which is proposed to be annexed and also defining the municipality boundaries as they will exist following an-

nexation. It also requires that the ordinance describe in general terms the services and improvements to be rendered in the territory to be annexed and the approximate time within which same shall be accomplished, No contention is made that the requirements of this statute were not met.

Sections 3374.11 and 3374.12 set forth the procedures required following adoption of the annexation ordinance. A petition is filed in the Chancery Court in the county in which the municipality is located asking ratification and approval of the ordinance. The Chancellor then fixes a date certain for a hearing upon the petition and notice thereof is given in the manner and for the time provided in Section 3374.04. (Publication of Notice for three consecutive weeks, and the posting of notice in three or more public places in the territory to be annexed.)

Finally, Section 3374.13 provides that the Chancellor, after the hearing on the petition, shall enter a decree based upon the evidence in which he shall find whether or not the proposed annexation is reasonable and required by the public convenience and necessity. This section sets forth further that the decree shall become effective ten days following the date thereof or ten days from the final determination of an appeal thereon.

II.

THE PROCEEDINGS BELOW

The appellee, City of Biloxi, Mississippi, on May 3, 1962, adopted the ordinance required by statute enlarging the boundaries of the city and petitioned the Chancery Court of Harrison County, Mississippi for ratification and confirmation of the ordinance. The Chancellor fixed the date for the hearing upon the petition and notice was

given as provided by Section 3374.12 and 3374.04, Mississippi Code Annotated (1942), Recompiled.

The appellant at page 11 of her Jurisdictional Statement maintains that she had no notice nor privilege of protest. To the contrary, notice was given as provided for by statute and a number of objectors, including the appellant, appeared and filed written objections. These objections were heard and the appellant actually testified at the hearing before the Chancery Court of Harrison County, Mississippi.

Following the hearing, the ordinance of the City of Biloxi was ratified and confirmed by the Chancellor (Appellant's Jurisdictional Statement, Appendix "B", pages 21-29). This decree was affirmed by the Supreme Court of Mississippi on October 4, 1965 (Dorothy E. Bridges v. City of Biloxi, Mississippi, 178 So. 2d 683, Appendix "C" to Appellant's Jurisdictional Statement, pages 31-40).

The judgment of the Supreme Court of Mississippi found that the matter had been fully heard, that the evidence substantiated the decree of the Chancellor, that the appellee had fully complied with the law and that the evidence wholly justified the annexation.

The appellant, in her Jurisdictional Statement, suggests that this is a class case. Such a suggestion has never previously been made in this case. A proceeding does not fall within the category of a class action merely because one of the parties says that it does. On the other hand, it must meet specific and well defined qualifications set forth in Rule 23, Federal Rules of Civil Procedure.

At pages 6 and 7 of her Jurisdictional Statement, the appellant maintains that the depravation of her consti-

tutional rights was timely raised and that the appellee has attempted to mislead the Court in this regard. To this appellee takes exception. The appellant, together with others, filed Objections to the Ratification, Approval and Confirmation of the Biloxi Annexation Ordinance (see Appendix "A" hereto). These objections were filed on June 25, 1962 which was the final day for the filing of such objections under the notice issued from the Chancery Court of Harrison County, Mississippi in accordance with Section 3374.04, Mississippi Code Annotated (1942) Recompiled. It will be noted that these objections (Appendix "A") raised *no* constitutional question.

III.

ARGUMENT

The Case Presents No Substantial Questions Not Previously Decided by This Court

This Court, in numerous cases, has announced the rule that territory may be annexed by or consolidated into a city without the consent and even against remonstrance of the inhabitants of the annexed area, and there is no depravation of property without due process of law by reason of additional tax burdens falling upon those annexed. *Hunter v. City of Pittsburgh,* 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed 151; *United States v. Memphis,* 97 U.S. 284, 24 L. Ed. 937; *Kelly v. Pittsburgh,* 104 U.S. 78, 26 L. Ed 658.

In *Hunter v. Pittsburgh, supra,* there was concerned a Pennsylvania Act authorizing the consolidation of two cities upon the majority vote of the electors in the combined cities. The electors of the cities of Pittsburgh and Allegheny voted in favor of the consolidation even though a majority of the votes cast in the smaller city of Alle-

gheny opposed it. Citizens of Allegheny objected and contended that the Pennsylvania Act was unconstitutional in that it deprived them of their property without due process of law.

This Court rejected their contentions and affirmed the State Court saying in part:

> "We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme,

and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it."

In the case at bar, the Supreme Court of Mississippi, in its opinion affirmed the Decree of the Chancery Court of Harrison County, Mississippi and disposed of the contention of the appellant that she will be denied due process and equal protection of law because her property will be subject to taxation to pay general obligation bonds issued by the City of Biloxi, Mississippi before the annexation ordinance was passed;

"Objectors contend that they will be denied due process and equal protection of the law under the Mississippi and United States Constitutions because their property will be subject to taxation to pay general obligation bonds issued by the City of Biloxi before the annexation ordinance was passed. This contention is not supported by reason or authority. If this were the law it would be practically impossible to annex territory to a municipality. Most municipalities have existing general obligation bonded indebtednesses which are serviced and retired from tax proceeds. The cases cited by objectors in support of this argument

are not persuasive. Barnes v. Kansas City, 359 Mo. 519, 222 S.W. 2d 756 (1949), 10 A.L.R. 2d 553 (1950), holds that property brought into a municipality by annexation is subject to taxation to discharge municipal indebtedness previously incurred and existing at the time of annexation. There is no statute in this state exempting residents of annexed areas from paying taxes for general municipal purposes. *They are required to share in the burdens and obligations as well as the benefits common to all citizens of the city.''* Dorothy E. Bridges v. City of Biloxi, Mississippi, 178 So. 2d, 683 (page 685-686) (Emphasis added)

In an attempt to support her novel theory that the Mississippi statutes regarding annexation by municipalities is unconstitutional and permits unlawful discrmination and the taking of property without due process, the appellant cites a number of cases, none of which afford her any assistance.

Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed 2d 663 concerns the violation of the Fourteenth Amendment by reason of the apportionment of representation in the Tennessee Legislature. In that case there was an alleged impairment of voting rights. No such question arises in this case. Every resident of the territory sought to be annexed by the appellee was given notice and given an opportunity to be heard in the Chancery Court of Harrison County, Mississippi before that court determined the reasonableness of the ordinance of annexation and before it determined whether such annexation was required by public convenience and necessity. Due process of law does not hinge upon the franchise.

The appellant cites *Yick Wo v. Hopkins,* 118 U.S. 365, 6 S. Ct. 1064, 30 L. Ed 220; *Dean Milk Co. v. City of*

Madison, 340 U.S. 349, 71 S. Ct. 295, 95 L. Ed 329; and *Boynton v. Virginia,* 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed 2d 206. Each of these cases involves the alleged discriminatory application or enforcement of a state statute or city ordinance. There exists in this action nothing to suggest that the annexation statutes of the State of Mississippi have been applied discriminately and the appellant has never previously hinted of such. All of the cases in this regard which are cited by the appellant in support of her contentions resolve themselves to alleged arbitrary action by state or municipal authorities. However, neither the appellant nor any objector, has ever contended that the municipal authorities of the City of Biloxi, in passing the annexation ordinance, acted arbitrarily or for purposes of discrimination. Furthermore, the Chancery Court of Harrison County, Mississippi reviewed the actions of the municipal authorities, confirmed and ratified such actions and the Supreme Court of Mississippi, in turn, affirmed all previous actions.

The appellant seems comforted by the decisions in *Mount Pleasant v. Beckwith,* 100 U.S. 514, 25 L. Ed 699, *Morgan v. Beloit,* 74 U.S. 619, 19 L. Ed 203, *United States v. Memphis, supra,* and *Laramie County v. Albany County,* 92 U.S. 307, 23 L. Ed 552. These cases offer her no solace. *Mount Pleasant v. Beckwith, supra,* concerns legislative dissolution of a municipal corporation and the division of its territory between two other municipalities. This Court held that the surviving municipalities succeeded to the public property of the dissolved city and became liable for its previously incurred obligations. Appellee takes no exception to this.

Morgan v. Beloit, supra, involves the effect upon judgments of an old municipal corporation whose charter had been called and replaced by another charter. The Court

held that equitable principles were involved in that case and that there was no adequate remedy at law.

In *United States v. Memphis, supra,* the City of Memphis annexed a certain territory after having entered into a contract for the paving of city streets, none of which were in the annexed territory. The Tennessee Legislature exempted the residents of the annexed territory from taxation for the payment of any part of the debts of the city incurred for paving prior to the annexation. The Court held that the act exempting the residents of the annexed territory from such taxation was valid and stated:

> "Had the Act of 1869 never been passed, it must be conceded they would have been on an exact equality with all of the owners of property in the City, equally entitled with them to all municipal rights and privileges, and equally subject to all municipal burdens and charges."

Again, in *Laramie County v. Albany County, supra,* this Court announced the same general rule. There it was held that a legislature may divide counties and towns and may apportion the common property and the common debts; however, in the absence of such apportionment the municipality or county owns the public property within its limits and is responsible for all debts contracted before the act of separation.

The case of *City of Gulfport, Mississippi v. Todd,* 92 Miss. 428, 46 So. 541, is certainly no support for the appellant. That case said only, that, by annexation, a municipality may not change the date upon which property must exist within the municipal boundaries for assessment and tax purposes.

All remaining cases cited by the appellant hold no possible application to the case at bar. The appellant has recited no authority to sustain her claim that imposing liability for pre-existing debts upon the territory which has been annexed violates any provision of the United States Constitution. In point of fact, the decided cases by this Court hold and demand the opposite conclusion.

IV.

CONCLUSION

Appellee, City of Biloxi, Mississippi, respectfully submits that the questions upon which a decision in this cause rely are so unsubstantial and frivolous as to require no further argument and respectfully moves the Court to dismiss this appeal.

Respectfully submitted,

ALBERT SIDNEY JOHNSTON, JR.
3-5 Schwan Building
Biloxi, Mississippi

and

L. ARNOLD PYLE
1347 Deposit Guaranty Bank Building
Post Office Box 427
Jackson, Mississippi

By: L. Arnold Pyle

Counsel for Appellee,
CITY OF BILOXI, MISSISSIPPI

CERTIFICATE OF SERVICE

I, L. Arnold Pyle, one of the attorneys for the appellee, City of Biloxi, Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served printed copies of the foregoing Motion to Dismiss on the appellant in the following manner:

1. By mailing two (2) printed copies thereof in a duly addressed envelope with first class postage prepaid, to Honorable Upton Sisson, 1913-15th Street, Gulfport, Mississippi, one of the attorneys of record for the appellant; and

2. By mailing two (2) printed copies of said motion in a duly addressed envelope, with first class postage prepaid to Honorable Forrest B. Jackson, Post Office Box 124, Jackson, Mississippi, one of the attorneys of record for the appellant.

I further certify that I have this day mailed by first class mail, postage prepaid, forty (40) printed copies thereof to the Clerk, United States Supreme Court, Washington, D. C. 20530.

This the 10th day of February, 1966.

L. Arnold Pyle

L. ARNOLD PYLE
1347 Deposit Guaranty Bank Building
Jackson, Mississippi

One of the Attorneys for Appellee,
City of Biloxi, Mississippi

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APPENDIX "A"

IN THE CHANCERY COURT
OF HARRISON COUNTY, MISSISSIPPI
JULY 1962 TERM

No. 45,112

IN THE MATTER OF THE EXTENSION
OF THE BOUNDARIES OF THE CITY
OF BILOXI, MISSISSIPPI

OBJECTIONS TO THE RATIFICATION,
APPROVAL AND CONFIRMATION OF
BILOXI ORDINANCE NO. 1035,
EXTENDING THE BOUNDARIES OF
THE CITY OF BILOXI, MISSISSIPPI

Come now C. T. SWITZER, W. T. BRADY, JOHN W. ATKINSON, ADRIAN WEILL, ALFRED H. KRUSE, PEARL WALTERS, GLENN P. HUFFSTETTER, N. J. BITTAR, A. B. POWELL, by and through their attorneys of record, UPTON SISSON and JOEL BLASS, and joined in by numerous other persons whose signatures are hereto affixed, all of whom are interested in, affected by and objecting to the ratification, approval and confirmation of Ordinance No. 1035 of the City of Biloxi, extending its boundaries and enlarging the corporate area as proposed by said Ordinance and as set forth in the amended petition filed by the City of Biloxi herein, and in support of their said objections, would respectfully show unto the Court as follows, to-wit:

1.

That public convenience and necessity does not require the proposed annexation by the City of Biloxi.

2.

That the proposed annexation by the City of Biloxi is unreasonable, uneconomical and detrimental to the residents of the area proposed to be annexed and particularly to these objectors.

3.

That the City of Biloxi cannot economically, or feasibly provide the services it proposes by said Ordinance.

4.

That the people living within the area proposed to be annexed by the City of Biloxi are culturally, economically and socially more closely connected with each other than with the City of Biloxi.

5.

That the area proposed to be annexed by the City of Biloxi is included within the boundaries of an area proposed to be incorporated as Beauvoir, Mississippi, as reflected by the Petition on file in Cause No. 43,614 on the docket of the Chancery Court of Harrison County, Mississippi, which said Cause was filed on the 4th day of March, 1961, and the same was pending in this Court on March 6, 1962, being the date of the filing of the original petition for ratification, approval and confirmation of an ordinance extending and enlarging the boundaries of the City of Biloxi, Mississippi, as well as May 4, 1962, being the filing date of the amended petition herein for the ratification, approval and confirmation of Ordinance No. 1035; that the City of Biloxi was, therefore, without

authority of law to enact an ordinance to annex an area while a petition for the incorporation of the identical area, or practically the identical area, was on file and pending in the Chancery Court of Harrison County, Mississippi, and, therefore, the said Ordinance No. 1035 of the City of Biloxi is and was void and a nullity.

6.

That a portion of the area sought to be annexed by the City of Biloxi is and was, on the date of the filing of the petition herein, included within the boundaries of an area sought to be annexed by the City of Gulfport in Cause No. 45,143, said Petition for Ratification, Approval and Confirmation of an Ordinance of the City of Gulfport, having been filed by the City of Gulfport on March 12, 1962.

7.

And for other causes to be shown on the hearing hereof.

Respectfully submitted.

C. T. Switzer
William T. Brady
N. J. Bittar
Adrian Weill
Alfred H. Kruse
Pearl M. Walters
Glen P. Huffstetter

END